



THE COMMONWEALTH OF MASSACHUSETTS  
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April 24, 2015

The Honorable William F. Galvin  
Secretary of the Commonwealth of Massachusetts  
Regulations Division  
State House, Room 117  
Boston, MA 02133

RE: Proposed Regulation 940 C.M.R. 33.00

Dear Secretary Galvin:

Pursuant to G.L. c. 30A, § 2, agencies promulgating new regulations must submit a Small Business Impact Statement ("Statement") for inclusion with the record of the regulations. Our office submits the following Statement for 940 C.M.R. 33.00: Earned Sick Time.

Proposed 940 C.M.R. 33.00 is promulgated by the Attorney General pursuant to M.G.L. c. 149, § 148C. The law was approved by the voters on November 4, 2014.

The regulation will explain employees' and employers' rights and obligations under the law. The regulation will describe how employer size is calculated, for purposes of determining whether earned sick time must be paid or unpaid. The regulation will further define the process for accruing earned sick time, wages that must be paid when using earned paid sick time, recordkeeping requirements and appropriate documentation and notice when using earned sick time. The regulation will also explain actions the Attorney General's Office may take to address violations.

**1. Estimate the number of small businesses subject to the proposed regulation.**

The Earned Sick Time law applies to all public and private employers in the Commonwealth, except the federal government and cities and towns. A city or town is not required to provide earned sick time unless the law is accepted by vote or by appropriation as prescribed in Article CXV of the Amendments to the Massachusetts Constitution.

The law requires an employer with 11 or more employees to provide earned sick time that is paid, and requires an employer with fewer than 11 employees to provide earned sick time that is unpaid. The regulation establishes a formula for an employer to determine whether it must provide earned sick time that is paid or unpaid.

**2. What are the projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation?**

Employers who do not offer paid time off benefits will have to establish new reporting and recordkeeping procedures that comply with proposed 940 C.M.R. 33.00 and M.G.L. c. 149, § 148C. Employers that currently offer paid time off benefits to their employees will have to adjust their existing reporting and recordkeeping consistent with the requirements of 940 C.M.R. 33.00 and M.G.L. c. 149, § 148C.

The proposed regulation, consistent with the Earned Sick Time law, obligates an employer to: (1) determine whether it must provide earned sick time that is paid or unpaid; (2) track the accrual and use of earned sick time by each employee, and maintain such records for at least three years; (3) calculate an appropriate hourly rate for an employee who is not otherwise paid at an hourly rate; (4) provide each employee with a record of the employee's accrual and use of earned sick time; and (5) upon request, provide a record of use and accrual to the Attorney General.

**3. Detail the appropriateness of performance standards versus design standards.**

Neither performance standards nor design standards are applicable to the proposed regulatory changes.

**4. Identify the regulations of the promulgating agency, or of another agency or department of the Commonwealth, which may duplicate or conflict with the proposed regulation.**

Earned sick time shall be in addition to employment leave permitted under the Small Necessities Leave Act (M.G.L. c. 149, § 52D and 940 C.M.R. 20.00), the Parental Leave Act (M.G.L. c. 149, § 105D, 804 C.M.R. 3.00 and 804 C.M.R. 8.00) and the Domestic Violence Leave Act (M.G.L. c. 149, § 52E).

**5. Analyze whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth.**

The regulation is unlikely to deter or encourage the formation of new businesses in the Commonwealth.

I submit this Small Business Impact Statement on behalf of the Attorney General pursuant to the requirements of G.L. c. 30A, § 2.

Sincerely,

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